

(6) *Waiver of information transmission requirements.* The Administrator may waive the requirements of paragraph (b)(5) of this section for any category of sources (including any class, type or size within such category) by transmitting the waiver in writing to the delegate Tribal agency.

(7) *Retention of records.* Where a delegate Tribal agency prepares draft or final permits or receives applications for permit revisions on behalf of EPA, the records for each draft and final permit or application for permit revision must be kept by the delegate Tribal agency for a period not less than 3 years.

(8) *Delegation of signature authority.* To receive delegation of signature authority, the legal statement submitted by the Tribal agency pursuant to paragraph (b)(1) of this section must certify that no applicable provision of Tribal law requires that a minor NSR permit be issued after a certain time if the delegate Tribal agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit).

(c) *Are there any non-delegable elements of the Federal minor NSR program in Indian country?* The following authorities cannot be delegated outside of EPA:

(1) The Administrator's authority to object to the issuance of a minor NSR permit.

(2) The Administrator's authority to enforce permits issued pursuant to this program.

(d) *How will EPA transition its authority to an approved minor NSR program?*

(1) The Administrator will suspend the issuance of minor NSR permits under this program promptly upon publication of notice of approval of a Tribal implementation plan with a minor NSR permit program for that area.

(2) The Administrator may retain jurisdiction over the permits for which the administrative or judicial review process is not complete and will address this issue in the notice of program approval.

(3) After approval of a program for issuing minor NSR permits and the suspension of issuance of minor NSR permits by the Administrator, the Administrator will continue to admin-

ister minor NSR permits until permits are issued under the approved Tribal implementation plan program.

(4) Permits previously issued under this program will remain in effect and be enforceable as a practical matter until and unless the Tribe issues new permits to these sources based on the provisions of the EPA-approved Tribal implementation plan.

FEDERAL MAJOR NEW SOURCE REVIEW PROGRAM FOR NONATTAINMENT AREAS IN INDIAN COUNTRY

SOURCE: 76 FR 38802, July 1, 2011, unless otherwise noted.

§ 49.166 Program overview.

(a) *What constitutes the Federal major new source review (NSR) program for nonattainment areas in Indian country?* As set forth in this Federal Implementation Plan (FIP), the Federal major NSR program for nonattainment areas in Indian country (or "program") consists of §§ 49.166 through 49.175.

(b) *What is the purpose of this program?* This program has the following purposes:

(1) It establishes a preconstruction permitting program for new major sources and major modifications at existing major sources located in nonattainment areas in Indian country to meet the requirements of part D of title I of the Act.

(2) It requires that major sources subject to this program comply with the provisions and requirements of part 51, Appendix S of this chapter (Appendix S). Additionally, it sets forth the criteria and procedures in Appendix S that the reviewing authority (as defined in § 49.167) will use to approve permits under this program. Note that for the purposes of this program, the term SIP as used in Appendix S means any EPA-approved implementation plan, including a Tribal Implementation Plan (TIP). While some of the important provisions of Appendix S are paraphrased in various paragraphs of this program to highlight them, the provisions of Appendix S govern.

(3) It also sets forth procedures for appealing a permit issued under this program as provided in § 49.172.

(c) *When and where does this program apply?*

(1) The provisions of this program apply to new major sources and major modifications at existing major sources located in nonattainment areas in Indian country where there is no EPA-approved nonattainment major NSR program beginning on August 30, 2011. The provisions of this program apply only to new sources and modifications that are major for the regulated NSR pollutant(s) for which the area is designated nonattainment.

(2) The provisions of this program cease to apply in an area covered by an EPA-approved implementation plan on the date that our approval of that implementation plan becomes effective, provided that the plan includes provisions that comply with the requirements of part D of title I of the Act and § 51.165 of this chapter for the construction of new major sources and major modifications at existing major sources in nonattainment areas. Permits previously issued under this program will remain in effect and be enforceable as a practical matter until and unless the Tribe issues new permits to these sources based on the provisions of the EPA-approved Tribal implementation plan.

(d) *What general provisions apply under this program?* The following general provisions apply to you as an owner/operator of a source:

(1) If you propose to construct a new major source or a major modification at an existing major source in a nonattainment area in Indian country, you must obtain a major NSR permit under this program before beginning actual construction. If you commence construction after the effective date of this program without applying for and receiving a permit pursuant to this program, you will be subject to appropriate enforcement action.

(2) If you do not construct or operate your source or modification in accordance with the terms of your major NSR permit issued under this program, you will be subject to appropriate enforcement action.

(3) Issuance of a permit under this program does not relieve you of the responsibility to comply fully with applicable provisions of any EPA-approved

implementation plan or FIP and any other requirements under applicable law.

(4) Nothing in this program prevents a Tribe from administering a nonattainment major NSR permit program with different requirements in an approved TIP as long as the TIP meets the requirements of part D of title I of the Act.

§ 49.167 Definitions.

For the purposes of this program, the definitions in part 51, Appendix S, paragraph II.A of this chapter apply, unless otherwise stated. The following definitions also apply to this program:

Allowable emissions means “allowable emissions” as defined in part 51, Appendix S, paragraph II.A.11 of this chapter, except that the allowable emissions for any emissions unit are calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.

Enforceable as a practical matter means that an emission limitation or other standard is both legally and practically enforceable as follows:

(1) An emission limitation or other standard is legally enforceable if the reviewing authority has the right to enforce it.

(2) Practical enforceability for an emission limitation or for other standards (design standards, equipment standards, work practices, operational standards, pollution prevention techniques) in a permit for a source is achieved if the permit’s provisions specify:

(i) A limitation or standard and the emissions units or activities at the source subject to the limitation or standard;

(ii) The time period for the limitation or standard (e.g., hourly, daily, monthly and/or annual limits such as rolling annual limits) and

(iii) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting and testing.

(3) For rules and general permits that apply to categories of sources, practical enforceability additionally requires that the provisions: